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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 3:23-cv-04597-EMC

Filed: September 7 2023

District Judge: Honorable Edward M. Chen

ASHLEY GJOVIK, an individual,

Plaintiff,

v.

APPLE INC, a corporation,

Defendant.

MOTION FOR JUDICIAL NOTICE

Hearing

Dept: Courtroom 5, 17th Floor (Virtual)

Date: February 8, 2024 1:30 p.m.

Plaintiff Does Not Require Oral Arguments

Concurrent with:

Defendant's Motion to Dismiss (Doc #30)

P's Opposition to Motion to Dismiss (Doc #33)

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II. SUMMARY

1. Plaintiff Ashley Gjovik respectfully requests, pursuant to Federal Rules of Evidence 201, that the Court take judicial notice of the following of the public records described below and attached as Exhibits 1-12. Gjovik makes this request in support of her Second Amended Complaint and Opposition to Defendant's Motion to Dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

2. The Court may take judicial notice of facts that are "*not subject to reasonable dispute*" and that "*can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.*"¹ Where judicial notice is requested and the Court receives sufficient information, judicial notice may be mandatory.²

III. DOCUMENTS REQUESTED TO BE NOTICED

A. AGENCY ACTS & PUBLICATIONS

3. Judicial notice is properly taken for orders and decisions made by administrative agencies.³ Moreover, a court may take judicial notice of records and reports of administrative bodies.⁴ The Court may also take judicial notice of public records and government documents available from reliable sources on the internet (e.g., on webpages), that are "*generally*

¹ Federal Rules of Evidence 201(b); *Adetuyi v. City & Cnty. of San Francisco*, 63 F. Supp. 3d 1073, 1080–81 (N.D. Cal. 2014).

² Federal Rules of Evidence 201(c)(2).

³ *Bryant v. Carleson*; *Assembly of State of California v. U.S. Department of Commerce*, 797 F.Supp. 1554, 1558–59 (E.D.Cal.), affirmed 968 F.2d 916 (9th Cir.1992); *Missouri Pacific Railroad Company v. United Transportation Union, General Committee of Adjustment*, 580 F.Supp. 1490 (E.D.Mo.1984), affirmed 782 F.2d 107 (8th Cir.1986), certiorari denied 482 U.S. 927, 107 S.Ct. 3209, 96 L.Ed.2d 696 (1987).

⁴ See, e.g., *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986); *Interstate Natural Gas Co. v. Southern California Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953); *Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052, (9th Cir. 2007); *Interstate Natural Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (taking judicial notice of Federal Power Commission report); *Cactus Corner, LLC v. U.S. Dep't of Agric.*, 346 F. Supp. 2d 1075, 1096-1100 (E.D. Cal. 2004), aff'd, 450 F.3d 428 (9th Cir. 2006) (granting request for judicial notice of the authenticity and existence of published government letter issued by the Department of Agriculture).

considered not to be subject to reasonable dispute.”⁵ Press releases by government authorities may be self-authenticating under Rule 902(5) as official publications issued by a public authority.⁶ The Court may also take judicial notice of records such as public meeting minutes,⁷ or an official’s statement to a government body.⁸ In contrast, administrative records not appropriate for judicial notice may include private correspondence like emails.⁹ Records are self-executing when a seal is affixed and the document is signed, or it’s an official publication.¹⁰

i. US EPA, California EPA, and City/County HazMat Records (Exhibit 1 & 2)

4. The Court may take judicial notice of letters from agencies related to environmental matters,¹¹ such as records related to permits and licenses,¹² and environmental impact reports.¹³ The Court may take judicial notice of consent orders between private parties

⁵ See, e.g., *Dingle v. Bioport*, 270 F. Supp.2d 968, 972 (W.D. Mich. 2003), citing *Grimes v. Navigant Consulting, Inc.*, 185 F. Supp. 2d 906, 913 (N.D. Ill. 2002) (taking judicial notice of stock prices posted on a website); and *Cali v. E. Coast Aviation Servs. Ltd.*, 178 F. Supp. 2d 276, 287 (E.D.N.Y. 2001) (taking judicial notice of documents from the Federal Aviation Administration website); *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1023 (C.D. Cal. 2008) (taking judicial notice of drug labels taken from the Food and Drug Administration’s website); *Cnty. of Santa Clara v. Astra USA, Inc.*, 401 F. Supp. 2d 1022, 1024 (N.D. Cal. 2005) (taking judicial notice of price control regime posted on a Department of Health and Human Services website and drug-pricing contract between the government and pharmaceutical manufacturers).

⁶ Federal Rules of Evidence 902(5); See *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389, 397 (D. Conn. 2008).

⁷ See, e.g., *Schubert v. City of Rye*, 775 F. Supp. 2d 689, 695 n.3 (S.D.N.Y. 2011).

⁸ See, e.g., *ACLU v. Nat’l Sec. Agency*, 925 F.3d 576, 599 n. 126 (2d Cir. 2019); *Fairstein v. Netflix, Inc.*, 553 F. Supp. 3d 48, 62 (S.D.N.Y. 2021).

⁹ See, e.g., *Lee v. City of L.A.*, 250 F.3d 668 (9th Cir. 2001); *Quantum Labs, Inc. v. Maxim Integrated Prod. Inc.*, No. 18-CV-07598-BLF, 2019 WL 1767574, at *2–3 (N.D. Cal. Apr. 22, 2019).

¹⁰ Federal Rules of Evidence 902

¹¹ See, e.g., *Alliance for the Wild Rockies v. Savage*, 897 F.3d 1025, 1032 n.11 (9th Cir. 2018) (in Endangered Species Act case, reviewing court notices USFS letter requesting re-consultation with Fish and Wildlife Service before approving forest management project).

¹² See, e.g., *Massachusetts v. Westcott*, 431 U.S. 322, 97 S. Ct. 1755, 52 L. Ed. 2d 349 (1977) (records of the Vessel Documentation Division of the Coast Guard that an individual’s vessel is enrolled and licensed); *Olympic Forest Coalition v. Coast Seafoods Co.*, 884 F.3d 901, 904 (9th Cir. 2018) (reviewing court notices letter from Washington Department of Ecology to defendant stating that pollution discharge permit was not required).

¹³ See, e.g., *Center for Environmental Law and Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1010 n. 5 (9th Cir. 2011) (taking judicial notice of draft environmental impact statement published during

and environmental agencies related to hazardous waste liability.¹⁴ The Court may take judicial notice of agency reports that are "factual findings resulting from an investigation made pursuant to authority granted by law" and which suggest a "*pattern of violations*" with a company's "*day-to-day operations*."¹⁵

5. **Exhibit 1:** Exhibit 1 is a compilation of US EPA, California EPA, and Sunnyvale city documents related to environmental oversight of the property at 825 Stewart Drive, Sunnyvale California (a.k.a. the "TRW Microwave" Superfund site) at key times for this lawsuit, and these materials and the events they reference are mentioned, in the Second Amended Complaint and Opposition to the Motion to Dismiss. Exhibit 1 also includes Gjovik's US EPA FOIA appeal and decision in her favor.

6. **Exhibit 2:** Exhibit 2 is a compilation of US EPA, California EPA, CalOES, and Santa Clara city Fire Department/HazMat records related to environmental and health/safety oversight of the building/property/operations at 3250 Scott Blvd, Santa Clara, California at key times for this lawsuit, and these materials and the events they reference, are mentioned in the Second Amended Complaint and Opposition to the Motion to Dismiss.

ii. US NLRB and US DOL Filings (Exhibit 3 & 4)

7. The Court may take judicial notice of agency proceedings, including employment and labor proceedings.¹⁶

appeal, to determine whether defendant intended to divert water without evaluating environmental impact).

¹⁴ See, e.g., *Niagara Mohawk Power Corp. v. Chevron U.S.A., Inc.*, 596 F.3d 112, 124 (2d Cir. 2010) (noticing consent order executed by property owner and state Department of Environmental Conservation indicating release of CERCLA liability; order qualified as public record).

¹⁵ See, e.g., *In R&B Transportation, LLC v. U.S. Dep't of Labor*, No. 09-2148 (1st Cir. Aug. 26, 2010) (2006-STA-12) [DOT Reports]; *United States v. Ramirez-Jiminez*, 967 F.2d 1321, 1326 (9th Cir. 1992).

¹⁶ *Hansen v. Harper Excavating, Inc.*, 641 F.3d 1216, 1219 n. 2 (10th Cir.) (noticing documents from party's earlier ERISA action against employer, where facts available in court's public database), cert. denied, 132 S.Ct. 574 (2011); *Adetuyi v. City & Cnty. of San Francisco*, 63 F. Supp. 3d 1073, 1080–81 (N.D. Cal. 2014) (EEOC/DFEH); *Contreras v. UAL Corp.*, 2014 WL 554485, at *4 (N.D.Cal. Feb. 7,

8. **Exhibit 3:** Exhibit 3 is key filings for Gjovik’s US NLRB charges against Apple, which is referenced in the Second Amended Complaint, including the Charges and public dockets for her five claims, the January 2023 Decision of Merit on two charges, and NLRB comment provided for a new article on NLRB’s Decision of Merit for Gjovik’s charges.¹⁷

9. **Exhibit 4:** Exhibit 4 is key filings for Gjovik’s claim with the US Department of Labor (DOL) Whistleblower Protection Program against Apple, which is referenced in the Second Amended Complaint, including her initial charge, her case letter, the Financial Times article about her US DOL case, the preliminary determination on December 8 2023, and Gjovik appellate memo submitted December 24 2023.¹⁸ Exhibit 4 also includes Gjovik’s charge and acknowledgement for her California Department of Labor DIR Retaliation charges.

iii. US EEOC & California DFEH Filings (Exhibit 5)

10. It is well established that the Court may take judicial notice of administrative filings and communications such a Plaintiff’s charges of employment discrimination filed with the US EEOC and California DFEH against the defendant, and/or agency “right to sue” notices, all constitute “*matters of public record*” that may be judicially noticed.¹⁹

2014) (EEOC/DFEH); *Town of Norwood, Mass. v. New England Power Co.*, 202 F.3d 408 (1st Cir. 2000) (record in Federal Energy Regulatory Commission Proceedings).

¹⁷ <https://web.archive.org/web/20230130234121/https://www.bloomberg.com/news/articles/2023-01-30/apple-executives-violated-worker-rights-us-labor-officials-say>

¹⁸ Financial Times: “Apple faces probe over whether it retaliated against whistleblower,” December 13 2021, <https://web.archive.org/web/20211213223210/https://www.ft.com/content/973aae8d-21d9-4e84-8912-ead071c7935d>

¹⁹ See, e.g., *Ayala v. Frito Lay, Inc.*, 263 F. Supp. 3d 891, 901–02 (E.D. Cal. 2017), citing *Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007); see also *Adetuyi v. City and County of San Francisco*, 63 F.Supp.3d 1073, 1080 (N.D. Cal. 2014) (taking judicial notice of plaintiff’s charges filed with the DFEH, EEOC as well as DFEH letters indicating receipt of the charges, and the DFEH right-to-sue letter).

11. **Exhibit 5:** Exhibit 5 is Gjovik’s US EEOC and California DFEH charges, right-to-sue notices, and news coverage of Gjovik’s US EEOC and California DFEH charges Exhibit 5 also includes Gjovik’s Unemployment Insurance Appeal Decision.²⁰

iv. US SEC Filings (Exhibit 6)

12. The Court may take judicial notice of Company Securities and Exchange Commission (SEC) filings “*for the purpose of determining what statements the documents contain, not to prove the truth of the documents' contents.*”²¹ The Court may take judicial notice of corporate press releases on financial matters.²²

13. **Exhibit 6:** Exhibit 6 is Gjovik’s SEC whistleblower tip filed on August 31 2021, Apple’s 2021 annual Shareholder Reports, and the announcement that Ronald Sugar was joining the Board of Directors of Apple. This exhibit also includes miscellaneous US DOJ/FBI/FDA filings.

B. LEGAL DECISIONS, ORDERS, AND SETTLEMENTS (EXHIBIT 7, 8, 9)

14. When courts take judicial notice of the fact of another court's decision, they recognize the simple fact that a decision has been made.²³ The notice is not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and

²⁰ Business Insider: “*Program manager fired by Apple allegedly over workplace complaints receives right to sue from federal agency,*” Sept 10 2021, <https://web.archive.org/web/20210912031651/https://www.businessinsider.com/fired-apple-engineer-ashley-gjovik-gets-right-to-sue-from-eecoc>

²¹ See, e.g., *FindWhat Investor Group v. FindWhat.com*, 658 F.3d 1282, 1297 n5 (11th Cir. 2011) (noticing contents of documents filed with SEC); *In re Morgan Stanley Information Fund Securities Litigation*, 592 F.3d 347, 354 n5 (2d Cir. 2010) (noticing taking contents of public SEC filings in enforcement action when reviewing dismissal of class actions that relied upon portions of filings in pleadings); *Taylor*, 162 F.3d at 830 (court filings); *Lovelace v. Software Spectrum*, 78 F.3d 1015, 1018 (5th Cir.1996) (SEC filings).

²² See, e.g., *Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (taking judicial notice of properly-authenticated public disclosure documents filed with SEC); *In re NAHC, Inc. Securities Litigation*, 306 F.3d 1314, 1331 (3d Cir. 2002).

²³ *Lysengen ex rel. Morton Bldg. v. Argent Trust Co.*, 498 F.Supp.3d 1011, 1017-18 (C.D. Ill. 2020).

related filings.²⁴ A court may take judicial notice of decisions, orders, settlements, pleas, and transcripts in other lawsuits.²⁵

15. Gjovik requests judicial notice of the fact of litigation and filings.²⁶ The court may grant judicial notice for legal pleadings, and other papers on file in other actions pending in court, as long as the facts noticed are not subject to reasonable dispute.²⁷ Among other documents, the legal papers may include filings,²⁸ service papers, stipulations,²⁹ case dockets and filing records,³⁰ and transcripts.³¹ The Court may take judicial notice of court filings including Complaints, Orders, Decisions, Judgements,³² and Consent Decrees.³³ Filing from any court proceedings, regardless of jurisdiction, may be judicially noticed, as long as they have a direct relation to matters at issue.³⁴

²⁴ *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991); *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A.*, 146 F.3d 66, 70 (2d Cir.1998).

²⁵ *National Fire Ins. Co. of Hartford v. Thompson*, 281 U.S. 331, 336, 50 S. Ct. 288, 290, 74 L. Ed. 881 (1930), cited with approval, *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 157 n.6, 89 S. Ct. 935, 942, 22 L. Ed. 2d 162 (1969); *ITT Rayonier Inc. v. U.S.*, 651 F.2d 343, 345 n2, (5th Cir. 1981) (settlement in related proceeding); *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007).

²⁶ *Rates Technology Inc. v. Speakeasy, Inc.*, 685 F.3d 163, 166 n3 (2d Cir. 2012) (can notice document filed in another court to establish fact of litigation and related filings).

²⁷ *Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052, (9th Cir. 2007).

²⁸ *Harris v. County of Orange*, 682 F.3d 1126, 1131–1132 (9th Cir. 2012).

²⁹ *U.S. v. Ferguson*, 681 F.3d 826, 834 (6th Cir. 2012).

³⁰ *Ennenga v. Starns*, 677 F.3d 766, 774 (7th Cir. 2012).

³¹ *Locicero v. Leslie*, 948 F.Supp. 10, 12 (D.Mass.1996).

³² *Adetuyi v. City & Cnty. of San Francisco*, 63 F. Supp. 3d 1073, 1080–81 (N.D. Cal. 2014); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir.2006) (it is appropriate to take judicial notice of court filings and other matters of public record such as pleadings in related litigation); *Headwaters Inc. v. U.S. Forest Service*, 399 F.3d 1047, 1051 n. 3 (9th Cir.2005) (courts may take judicial notice of the docket in related cases as materials from a proceeding).

³³ *Citizens for a Better Env't-Cal. v. Union Oil Co.*, 861 F.Supp. 889, 896 (N.D.Cal.1994) (taking judicial notice of related consent decree), *aff'd*, 83 F.3d 1111 (9th Cir.1996).

³⁴ *Opoka v. I.N.S.*, 94 F.3d 392, 394–95 (7th Cir. 1996); *Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994) (confirming that court documents from state proceeding are noticeable); *Anderson v. Rochester—Genesee Regional Transp. Auth.*, 337 F.3d 201, 205 (2d Cir.2003) (taking judicial notice of a district court opinion).

1 16. **Exhibit 7:** Exhibit 7 is the Court records for the criminal charges against Gene
 2 Levoff (US SEC/US DOJ)³⁵ & Thomas Moyer (California District Attorney/state court)³⁶
 3 including indictments, motions, responses, settlement, and appeals. Both cases are noted in the
 4 RICO claim. Exhibit 7 also includes the Complaints and Decisions/Settlements for Gjovik's
 5 colleagues *Banko v Apple*,³⁷ and *Brown v Apple*,³⁸ both of which are mentioned repeatedly
 6 throughout the Second Amended Complaint. Gjovik also requests judicial notice that *Brown v*
 7 *Apple* is a retaliation and IIED lawsuit filed in 2018 against Apple, and Brown reported to the
 8 same person Gjovik reported to, Dan West, and that the case was settled, and Apple's
 9 representation to defend Gjovik's manager was Jessica Perry with the law firm Orrick, who is
 10 also counsel here. (See her prior filings in the Exhibit).

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 12 17. **Exhibit 8:** Exhibit 8 is the California EPA Department of Toxic Substances
 13 Control lawsuit against Apple, including complaint, settlement and consent decree, and
 14 government press release.³⁹ Exhibit 8 also includes Apple's comment to Reuters about its 2016
 15 settlement with the California EPA, which Gjovik mentions in her Second Amended Complaint
 16 and her Opposition to the Motion to Dismiss, and is cited in her Dodd Frank/SOX claims.⁴⁰
 17 Exhibit 8 also includes the agency complaint and news article for the North Carolina hazardous
 18 waste violations noted in the RICO claim.⁴¹
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23 ³⁵ *United States v Gene Levoff*, 2:19-mj-03507-MF, United States District Court, District of New Jersey
 24 (2019-2023).

25 ³⁶ *People v Thomas Moyer*, No. H049408, In The Court of Appeal of the State of California Sixth
 Appellate District; *People v Thomas Moyer*, No. C2015936, Santa Clara County Super. Ct. (2021-)

26 ³⁷ *Banko v Apple*, Case3:13-cv-02977-VC, Northern District of California, US District Court (2013-
 20150).

27 ³⁸ *Brown v Apple*, Case #18CV330922, Superior Court of California, County of Santa Clara (2018-2019).

28 ³⁹ *People of the State of California, ex rel. Barbara A. Lee Director of the Department of Toxic
 Substances Control v Apple Inc*, Case No. 16-CV-303579, Superior Court of the State of California,
 County of Santa Clara, (2016).

⁴⁰ Reuters, <https://www.reuters.com/article/idUSKBN13V2HS/>

⁴¹ State of North Carolina, Apple Inc, Compliance Order Docket #2017-047 (2017).

18. **Exhibit 9:** Exhibit 9 is a selection of documents in the “*Joanna Appleseed*”⁴² matter, including copies of the three dockets, the original petition, the FBI complaint included in the Petitioner’s evidence, the Petitioner’s written testimony, transcripts, and the final decision vacating the order and dismissing the lawsuit.⁴³

C. NEWS ARTICLES, PRESS RELEASES, PUBLICATIONS (EXHIBIT 10 & 11)

19. The Court may take judicial notice of the coverage and existence of newspaper and magazine articles.⁴⁴ The Court may take judicial notice of corporate annual reports.⁴⁵ The Court may take judicial notice of agency⁴⁶ and corporate press releases.⁴⁷ Newspapers or publications, and official publications, are self-executing records.⁴⁸

20. **Exhibit 10:** Exhibit 10 is a compilation of news articles and press releases about Apple’s environmental practices including:

- a. Apple’s Press Release for Earth Day on April 21 2021, which Gjovik mentions in her Second Amended Complaint and her Opposition to the Motion to Dismiss, and is cited in her Dodd Frank/SOX claims.⁴⁹

⁴² In 2022, Appleseed sued Gjovik and got an order making it illegal for Gjovik to even say/write Appleseed’s true name, and while the order was reversed and vacated, Gjovik still refuses to write/say Appleseed’s actual name.

⁴³ *CS v Gjovik*, 22CIV01704KCX, King County District Court, State of Washington (2022-2023); *CS v Gjovik*, No 22-2-03849-7 SEA, King County Superior Court, State of Washington (2022).

⁴⁴ See, e.g., *Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C.Cir.1991) (allowing judicial notice of the existence of newspaper articles); *Jackson v. Godwin*, 400 F.2d 529, 536 (5th Cir.1968) (finding that newspapers and magazines allowed in a prison carried extensive coverage of riots to the point where the district court could take judicial notice of such coverage); *Farah v. Esquire Magazine*, 736 F.3d 528, 534 (D.C. Cir. 2013) (in defamation action, noticing publicly available historical articles attached to defendant publisher’s motions to dismiss).

⁴⁵ See, e.g., *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) citing *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 113 (2d Cir. 1982) (annual report alleged to contain fraudulent misrepresentations).

⁴⁶ See, e.g., *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389, 397 (D. Conn. 2008) (“Press releases by government authorities may be self-authenticating under Rule 902(5) as official publications issued by a public authority.”)

⁴⁷ See, e.g., *Arce v. Douglas*, 793 F.3d 968, 975, n.3 (9th Cir. 2015) (taking judicial notice of press release “because it is a public record on file with the Arizona State Board of Education”); *Jones ex rel. CSK Auto Corp. v. Jenkins*, 503 F. Supp. 2d 1325, 1339, n.6 (D. Ariz. 2007) (on motion to dismiss, judicial notice is “appropriate for SEC filings, press releases, and accounting rules”).

⁴⁸ Federal Rules of Evidence 902

⁴⁹ <https://web.archive.org/web/20210422040354/https://www.apple.com/newsroom/2021/04/apple-celebrates-earth-day-2021/>

- b. The two public articles about 825 Stewart Drive and the TRW Microwave Superfund (2013,⁵⁰ 2017⁵¹) referenced in Gjovik's Second Amended Complaint.
- c. The article Gjovik posted on Twitter less than 15 minutes prior to the Workplace Violence investigator contacting her and her subsequent termination later that day.⁵² The article and content referenced in the article is mentioned repeatedly in the Second Amended Complaint.

21. **Exhibit 11:** Exhibit 11 is a compilation of news articles about Gjovik's complaints against Apple prior to and shortly after termination. Gjovik's Second Amended Complaint refers to some of these article's directly, and also refers to the press coverage of Gjovik at this time generally, as evidence for her whistleblower, intimidation/threats, and retaliation claims.

- d. The New York Times, "*Delays, More Masks and Mandatory Shots: Virus Surge Disrupts Office-Return Plans*," July 23, 2021.⁵³
- e. The New York Times, "*Ashley Gjovik - Quotation of the Day: Virus Surge Complicates Return-to-Office Plans*," July 24, 2021.⁵⁴
- f. The Verge, "*Apple places female engineering program manager on administrative leave after tweeting about sexism in the office*," August 4, 2021.⁵⁵
- g. NY Post, "*Apple exec says she was placed on leave after raising sexism concerns*," Aug 6 2021.⁵⁶
- h. Leaf&Core: "*An Apple Manager Complained About Sexism. Apple Put Her on Leave*," Aug 7 2021.⁵⁷

⁵⁰ <https://web.archive.org/web/20210414123923/https://www.theatlantic.com/technology/archive/2013/07/not-even-silicon-valley-escapes-history/277824/>

⁵¹ <https://web.archive.org/web/20210420232317/https://www.kqed.org/futureofyou/388730/silicon-valleys-toxic-past-haunts-sunnyvale-neighborhood>

⁵² <https://web.archive.org/web/20210912151516/https://archives.sfwkly.com/thesnitch/2011/09/02/lost-iphone-5-bernal-heights-man-says-visitors-impersonating-police-searched-his-home-exclusive>

⁵³ <https://web.archive.org/web/20210723170337/https://www.nytimes.com/2021/07/23/business/return-to-office-vaccine-mandates-delta-variant.html>

⁵⁴ <https://web.archive.org/web/20210724043253/https://www.nytimes.com/2021/07/24/todayspaper/quotation-of-the-day-virus-surge-complicates-return-to-office-plans.html>

⁵⁵ <https://web.archive.org/web/20210805001227/https://www.theverge.com/2021/8/4/22610112/apple-female-engineering-manager-leave-sexism-work-environment>

⁵⁶ <https://web.archive.org/web/20210806184947/https://nypost.com/2021/08/06/apple-exec-says-she-was-placed-on-leave-after-raising-sexism-concerns/>

⁵⁷ <https://web.archive.org/web/20210807210046/https://leafandcore.com/2021/08/07/an-apple-manager-complained-about-sexism-apple-put-her-on-leave/>

- i. Business Insider: “An *Apple* engineer on leave after publicly alleging sexism says co-workers kept a scoreboard to make her quit,” Aug 17, 2021.⁵⁸
- j. The Verge: “*Apple Cares About Privacy, Unless You Work at Apple*,” August 30, 2021.⁵⁹
- k. Business & Human Rights Resource Centre: “*Apple employees raise concerns company does not protect and at times invades their personal privacy*,” August 31 2021.⁶⁰
- l. Bloomberg: “*National Labor Relations Board Fields Complaints About Apple*,” Sept 2 2021.⁶¹
- m. Reuters: “*U.S. labor agency probes two complaints from Apple workers*,” Sept 2 2021.⁶²
- n. Financial Times: “*US labour board examines retaliation claims against Apple: Senior engineering program manager’s allegations include workplace harassment and job reassignment*,” Sept 2 2021.⁶³
- o. Gizmodo: “*Apple Fires Program Manager Who Accused Bosses of Harassment, Intimidation*,” Sept 9 2021.⁶⁴
- p. Bloomberg: “*Apple Fires Manager Who Complained; She Gains Right to Sue*,” Sept 9 2021.⁶⁵
- q. Apple Insider: “*Apple fires employee who spoke out on workplace issues, cites alleged leak*,” Sept 9 2021.⁶⁶
- r. Justia: “*Former Apple Employee Alleges Workplace Violations and Wrongful Termination*,” Sept 20 2021.⁶⁷
- s. Bloomberg: “*Apple CEO’s Anti-Leak Edict Broke Law, Ex-Employee Alleges*,” Oct 12 2021.⁶⁸

⁵⁸ <https://web.archive.org/web/20210819232235/https://www.businessinsider.com/apple-employee-ashley-gjvik-allegations-harassment-bullying-2021-8>

⁵⁹ <https://web.archive.org/web/20210831185617/https://www.theverge.com/22648265/apple-employee-privacy-icloud-id>

⁶⁰ <https://www.business-humanrights.org/en/latest-news/apple-employees-raise-concerns-company-does-not-protect-and-at-times-invades-their-personal-privacy/>

⁶¹ <https://web.archive.org/web/20210903062406/https://www.bloomberg.com/news/articles/2021-09-03/national-labor-relations-board-fields-complaints-about-apple>

⁶² <https://web.archive.org/web/20210904085050/https://www.reuters.com/technology/us-national-labor-relations-board-investigating-two-complaints-apple-workers-2021-09-02/>

⁶³ <https://web.archive.org/web/20210903030724/https://www.ft.com/content/484fa8be-925e-495c-91ff-54950b112754>

⁶⁴ <https://web.archive.org/web/20210910162702/https://gizmodo.com/apple-fires-program-manager-who-accused-bosses-of-haras-1847649269>

⁶⁵ <https://web.archive.org/web/20211013081522/https://www.bloomberg.com/news/articles/2021-09-10/apple-fires-manager-who-complained-allegedly-for-leaking-data>

⁶⁶ <https://web.archive.org/web/20210910044313/https://appleinsider.com/articles/21/09/10/apple-fires-employee-who-spoke-out-on-workplace-issues-cites-alleged-leak>

⁶⁷ <https://web.archive.org/web/20210922221902/https://news.justia.com/former-apple-employee-alleges-workplace-violations-and-wrongful-termination/>

⁶⁸ <https://web.archive.org/web/20211016103533/https://www.bloomberg.com/news/articles/2021-10-12/apple-ceo-s-anti-leak-edict-broke-the-law-ex-employee-alleges>

- t. Gizmodo: “*Apple Wanted Her Fired. It Settled on an Absurd Excuse*,” Oct 14 2021.⁶⁹
- u. Inverse, “*Apple is leaning on weak arguments to defend a senior engineer’s firing*,” October 15 2021.⁷⁰

D. MAPS & LOCATIONS (EXHIBIT 12)

22. The Court may take judicial notice of geographic locations,⁷¹ distances between locations,⁷² and transit information.⁷³

23. **Exhibit 12:** Exhibit 12 is a compilation of an aerial map (Google Maps) showing the property at 3250 Scott Boulevard, and the property at 3255 Scott Boulevard (the “Santa Clara Square Apartments”), and the distance (overhead) between the building at 3250 Scott Boulevard and the closest building at the apartment complex.⁷⁴

⁶⁹ <https://web.archive.org/web/20211017094448/https://gizmodo.com/apple-wanted-her-fired-it-settled-on-an-absurd-excuse-1847868789>

⁷⁰ <https://web.archive.org/web/20221129042312/https://www.inverse.com/input/culture/apple-is-leaning-on-weak-arguments-to-defend-a-senior-engineers-firing>

⁷¹ See, e.g., *United States v. Kelly*, 535 F.3d 1229, 1236-1237, n. 3 (10th Cir. 2008) (affirming the trial court taking judicial notice that Weber County is in the District of Utah) (locations of cities and streets through use of simple internet searches).

⁷² See, e.g., *United States v. Julius*, 14 F.4th 752, 756 (7th Cir. 2021) (“We and other courts have taken judicial notice of distance estimates from Google Maps).

⁷³ See, e.g., *United States v. Coutchavlis*, 260 F.3d 1149, 1153–54 (9th Cir. 2001) (road/transit information information).

⁷⁴ 3250 Scott Blvd, Santa Clara, CA,

https://www.google.com/maps/place/3250+Scott+Blvd,+Santa+Clara,+CA+95054/@37.3799267,-121.9731609,612m/data=!3m1!1e3!4m6!3m5!1s0x808fc9f310af8f4b:0xdbdb5a325bfc87b!8m2!3d37.3790401!4d-121.9717501!16s%2Fg%2F11bw49zp_0?entry=ttu; 3255 Scott Blvd, Santa Clara, CA, <https://www.google.com/maps/place/3255+Scott+Blvd,+Santa+Clara,+CA+95054/@37.3809818,-121.9740985,612m/data=!3m2!1e3!4b1!4m6!3m5!1s0x808fc9f29581a4cd:0xb0564c14c57472d9!8m2!3d37.381234!4d-121.9721944!16s%2Fg%2F11bw3xjf3m?entry=ttu>

IV. PROCEDURAL MATTERS

A. CONTENT NOT NOTICED AS FACT

24. Plaintiff requests judicial notice of the documents themselves: the existence of the document; the record of dates, actions, and statements wherein; but does not request judicial notice of the truth of assertions of fact within the documents.⁷⁵ “Conclusions of law, unreasonable inferences, or unwarranted deductions of fact,”⁷⁶ are not subject to judicial notice, nor are the findings of investigations.⁷⁷

B. DOCUMENTS ATTACHED

25. A party requesting judicial notice of material must provide the court and each party with a copy of the material. Gjovik’s efiled motion for judicial notice includes the numerical Exhibits noted in this filing as attached Exhibits on the docket. Where the date/time of reference is material, an archived version of the webpage is provided.⁷⁸

C. OPPOSITION TO MOTION TO DISMISS

26. A matter that is properly the subject of judicial notice may be considered along with the complaint when deciding a motion to dismiss for failure to state a claim.⁷⁹ Therefore, on a motion to dismiss a court may properly look beyond the complaint to matters of public

⁷⁵ See, e.g., *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). *Quantum Labs, Inc. v. Maxim Integrated Prod. Inc.*, No. 18-CV-07598-BLF, 2019 WL 1767574, at *2 (N.D. Cal. Apr. 22, 2019); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988 (9th Cir. 2018). *Quantum Labs, Inc. v. Maxim Integrated Prod. Inc.*, No. 18-CV-07598-BLF, 2019 WL 1767574, at *2–3 (N.D. Cal. Apr. 22, 2019); *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001).

⁷⁶ *Donovan v. Woodbridge Maint. Ass’n*, No. 2:14-cv-00995 JAM-EFB, 5 (E.D. Cal. Mar. 16, 2015); *Davenport v. Bd. of Trustees of State Center Cmty. Coll. Dist.*, 2008 WL 170876, at *5 (E.D. Cal. Jan. 18, 2008) (citing *Mack v. South Bay Beer Distributors*, 798 F.2d 1279, 1282 (9th Cir. 1986) and *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)).

⁷⁷ See, e.g., *Contreras v. UAL Corp.*, 2014 WL 554485, at *4 (N.D. Cal. Feb. 7, 2014).

⁷⁸ *HsingChing Hsu v. Puma Biotechnology, Inc.*, slip op. at 7. 8:15-cv-00865 (C.D. Cal. Sept. 30, 2016).

⁷⁹ *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016, fn. 9; (9th Cir. 2012); *In re Colonial Mortg. Bankers Corp.* 324 F.3d 12, 16, 19 (1st Cir. 2003); *Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994)

1 record and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment.⁸⁰
2 The court need not accept as true allegations that contradict facts that may be judicially noticed
3 by the court.⁸¹ Further, if the Court takes judicial notice of facts that contradict allegations in an
4 Answer or Motion to Dismiss, the Court need not accept those allegations could be true.⁸²
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27 ⁸⁰ *Sears, Roebuck Co. v. Metropolitan Engravers, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956); 5 C. Wright A.
28 Miller, Federal Practice Procedure, § 1363 at 659-60 (1969); *Mack v. S. Bay Beer Distribs., Inc.*, 798
F.2d 1279, 1282 (9th Cir. 1986). See *Phillips v. Bureau of Prisons*, 591 F.2d 966, 969 (D.C.Cir. 1979).

⁸¹ *Von Saher v. Norton Simon Museum of Art at Pasadena* 592 F.3d 954, 960, (9th Cir. 2010).

⁸² *Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1388 (9th Cir. 1987).

V. CONCLUSION & DECLARATION

27. I verified the authenticity of each of these documents. A true and correction version of each document is attached in each exhibit. I declare under penalty of perjury this is true and correction.

28. This Motion is filed, served, and noticed for the motion calendar of the Honorable Edward M. Chen, for hearing not less than 35 days after filing the motion, in compliance with Civil Local Rule 7.2(a).

29. In Compliance with Civil Local Rules and Judge Chen's Standing Orders, a Proposed Order is attached.

Signature of Plaintiff:



Printed Name of Plaintiff: Ashley M. Gjovik

Date: December 25 2023

VI. APPENDIX: TABLE OF ATTACHMENTS

Attached To:	Type of Document	Associated Claims, Generally	Description
Exhibit 01	Agency Record & Orders	Ultrahazardous; Nuisance; RICO; Dodd Frank; SOX; §§ 1102.5, 6310, 98.6; <i>Tamney</i> ; IIED	825 Stewart Drive, US EPA Complaint; Receipt of Complaint 825 Stewart Drive; 2021 US EPA, Inspection Notification; Inspection Report TRW Microwave, Deed TRW Microwave: US EPA Page; CalEPA Page 825 Stewart Drive; US EPA 2014 & 2016 Prospective Purchaser Letter 825 Stewart Dr 2021-2023 Letters
Exhibit 01	Agency Record: Decision	Nuisance; RICO; IIED; Ultrahazardous Activities	US EPA GC “Commercial” FOIA Appeal
Exhibit 02	Agency Record: Filing & Notice	Nuisance; RICO; IIED; Ultrahazardous Activities	3250 Scott Blvd, US EPA Complaint; Receipt of Complaint
Exhibit 02	Agency Record: Public Filing	Nuisance; RICO; IIED; Ultrahazardous Activities	3250 Scott Blvd, US EPA, 2020 TRI Filing; 2020 NEIS Filing; current ECHO
Exhibit 02	Agency Records	Nuisance; RICO; IIED; Ultrahazardous Activities	3250 Scott Blvd, Santa Clara FD/HM, Leaks: 2019 and 2021 Phosphine and/or Silane 3250 Scott RMP; Santa Clara FD/HM Citations CalOES: 2021 Phosphine leak
Exhibit 03	Agency Record: Filing & Notice	<i>Tamney</i> ; §§ 1102.5, 6310, 98.6; Bane; Ralph; RICO; IIED	NLRB Charges NLRB Decision of Merit
Exhibit 04	Agency Record: Filing	SOX; RICO; <i>Tamney</i> ; §§ 1102.5 and 6310.	Apple’s US DOL DWPP Position Statement
Exhibit 04	Agency Record: Filing & Notice	SOX; RICO; <i>Tamney</i> ; §§ 1102.5 and 6310.	US DOL DWPP Complaint and Confirmation Letter
Exhibit 04	Agency Record: Filing & Notice	<i>Tamney</i> ; §§ 1102.5, 6310, 98.6; Bane; Ralph; IIED	California DOL Complaint; Confirmation Letter
Exhibit 04	Agency Record: Notice & Complaint	RICO; <i>Tamney</i> ; §§ 1102.5; Bane; Ralph; IIED	US DOL Dismissal; Appeal
Exhibit 05	Agency Record: ALJ Decision	SOX; Dodd-Frank; §§ 1102.5, 98.6, 6310; RICO; <i>Tamney</i> ; IIED; Bane; Ralph	ALJ Unemployment Insurance Appeal decision
Exhibit 05	Agency Record: Notice & Complaint	<i>Tamney</i> ; Section 1102.5	US EEOC & Cal DFEH charges; receipts; Letters to Sue

1	Exhibit 06	Agency Record	SOX; Dodd-Frank	SEC filings: Apple Inc 2021 Annual Report
2	Exhibit 06	Agency Record: Filing	SOX; Dodd-Frank; <i>Tamney</i> ; § 1102.5; RICO; IIED	SEC whistleblower tip: Gjovik, August 31 2021
3	Exhibit 07	Legal Record: Complaint	RICO; Bane; Ralph	<i>State v Thomas Moyer</i> , SCC DA Complaint; Appellant Decision
4	Exhibit 07	Legal Record: Complaint	RICO	<i>US v Levoff</i> , US DOJ/US SEC Complaint; Motion to Dismiss; Decision
5	Exhibit 07	Legal Record: Complaint	<i>Tamney</i> ; IIED	<i>Crystal Brown v Apple Inc</i> Complaint <i>Crystal Brown v Apple Inc</i> Dismissal (Settlement)
6	Exhibit 07	Legal Record: Complaint	SOX; Dodd-Frank; §§ 1102.5, 98.6, 6310; RICO	<i>Banko v Apple Inc</i> Complaint, Decisions
7	Exhibit 08	Legal Record: Complaint & Order	Ultrahazardous; Nuisance; RICO; Dodd Frank; SOX; § 6310	CA DOJ/DTSC 2016 DTSC complaint, Settlement, & Order Press on DTSC Settlement 2017 North Carolina Complaint & Press
8	Exhibit 09	Court Records: Docket, Complaint, & Filings	RICO; Bane; Ralph, <i>Tamney</i> , IIED	<i>Gjovik v State</i> Docket (re: <i>C.S. v</i> <i>Gjovik</i>) <i>C.S. v Gjovik</i> , Court of Limited Jurisdiction Docket <i>C.S. v Gjovik</i> , Superior Court Docket <i>C.S. v Gjovik</i> , Petition <i>C.S. v Gjovik</i> , Written Testimony Petitioner's filed evidence: FBI Report
9	Exhibit 10	News Articles	All/Various	Apple, Earth Day, April 21 2021 KQED & The Atlantic on TRW Microwave 2011 Global Security Incident
10	Exhibit 11	News Articles	Dodd-Frank; SOX; Bane; Ralph; IIED; <i>Tameny</i> ; §§ 1102.5, 98.6, 6310; RICO	2021 Articles about Gjovik / Gjovik's Complaints
11	Exhibit 12	Maps/Locations	Ultrahazardous; Nuisance; RICO	Aerial map view of 3250 Scott Blvd Aerial map view of 3255 Scott Blvd